



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2019-0955]

RIN 1625-AA09

Drawbridge Operation Regulation; New River, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

---

**SUMMARY:** On July 13, 2020, the Coast Guard published a notification of proposed rulemaking (NPRM) to change the operating schedule that governs the Florida East Coast (FEC) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, Florida. This proposed change would allow the drawbridge to operate on a more predictable schedule. The Coast Guard is publishing this supplemental notice of proposed rulemaking (SNPRM) as considerable time has passed since the NPRM was published and minor modifications have been made to the proposed rule. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must reach the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0955 using Federal e-Rulemaking Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this supplemental proposed rule, call or e-mail Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard District, telephone 305-415-6740, email Jennifer.N.Zercher@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
ANPRM	Advance Notice of Proposed Rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
FL	Florida
FRA	Federal Rail Administration
FECR	Florida East Coast Railway
FEC	Florida East Coast
VTUS-F	Virgin Trains USA-Florida, LLC
MIASF	Marine Industries Association of South Florida

**II. Background, Purpose and Legal Basis**

The Florida East Coast (FEC) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, Florida is a single-leaf bascule railroad bridge with a four-foot vertical clearance at mean high water in the closed position. Traffic on the waterway includes both commercial and recreational vessels. Brightline, formerly Virgin Trains-USA Florida (VTUS-F), with support from the bridge owner, Florida East Coast Railway (FECR), requested a change to the drawbridge operating schedule due to an increase in rail traffic in recent years. The operating schedule for the bridge set forth in 33 CFR 117.313(c) no longer balances the needs of vessel and rail traffic.

On January 23, 2020, the Coast Guard published a Test Deviation, with a request for comments, entitled Drawbridge Operation Regulation; New River, Fort Lauderdale, FL in the Federal Register (85 FR 3852), to test the proposed operating schedule for the

FEC New River Railroad Bridge. Seven comments were received and addressed in the NPRM.

On July 13, 2020, the Coast Guard published a Notice of Proposed Rulemaking entitled Drawbridge Operation Regulation; New River, Fort Lauderdale, FL in the Federal Register (85 FR 41932). During the comment period that ended August 12, 2020, we received two comments and those comments are addressed in Section III of this SNPRM.

We are issuing this supplemental proposal as considerable time has passed since the NPRM was published and comments were considered after the comment period had closed that lead to minor changes to the proposed rule. An Ex Parte Memorandum summarizing the communication is available in the docket.

The Coast Guard is issuing this proposed rule under authority 33 U.S.C. 499.

### **III. Discussion of Comments and Change**

Two comments were received. One comment received was a re-submission by Brightline, formerly VTUS-F, which was addressed in the NPRM.

The second comment addressed concerns with the abbreviated vessel traffic study, interpretation of and language used in the proposed regulation. The commenter felt the inclusion of the abbreviated vessel traffic study might not have represented an accurate impact on the waterway as train service was disrupted by the coronavirus pandemic. The Coast Guard evaluated the survey provided. A decision was made to consider the data as train service was not reduced until March 18, 2020, the last day of the study.

The commenter's interpretation of the requirement to publish the 10-minute opening periods is correct. The requirement to publish the 10-minute opening periods applies to fixed 10-minute periods and the additional 10-minute periods from Noon to

2:59 p.m.

In regards to the commenter's interpretation of paragraph (5), actions taken by the Coast Guard, the Coast Guard will follow notification procedures to the maritime community as outlined by Coast Guard policy. Additionally, the Coast Guard will clarify who is to maintain the drawbridge log, mobile application and website in paragraphs (6) and (7) by adding the phrase "by the drawbridge owner" to the regulation.

The commenter requested to add language in paragraph (7)(ii), that would require notification of emergency circumstances be included on the website and mobile application. The following language was added "...schedules, including but not limited to impacts due to emergency circumstances, minor repairs and inspections..."

The commenter's interpretation of the paragraph (8)(iii) is accurate. The drawbridge must open after the passage of rail traffic. However, the bridge may remain closed to navigation if periodic maintenance or inspections will be conducted in accordance with paragraph (1).

Lastly, the Coast Guard received a request from Marine Industries Association of South Florida (MIASF) to review and potentially define the term "minor repairs" as written in the propose rule after the comment period had closed. The Coast Guard evaluated the term "minor repairs" as it relates to drawbridge operating regulations and Federal Rail Administration (FRA) regulations. The Coast Guard does not define nor quantify "minor repairs" when authorizing federal drawbridge operation regulations; whereas FRA outlines what constitutes "major repairs" in 49 CFR 232.303. The Coast Guard made the decision to remove "minor repairs" from the proposed rule and include the following "...and to perform periodic maintenance authorized in accordance with subpart A of this part."

#### **IV. Discussion of Proposed Rule**

The proposed rule will allow the drawbridge to operate on a more predictable

schedule. Under this proposed regulation, the draw of the FEC Railroad Bridge would provide a pre-determined 10-minute opening between 5:00 a.m. and 11:59 p.m. An additional 10-minute opening would be provided at various times throughout the day. A mobile application and website shall be maintained depicting the operational status of the drawbridge. This SNPRM proposes to remove “minor repairs” from the proposed regulatory text. This action allows for consistency with regulatory language frequently used in other regulations in 33 CFR part 117 subpart B. There are no other proposed changes to the operating schedule. The regulatory text we are proposing appears at the end of the document.

This proposed change would still allow vessels that are capable of transiting under the bridge, without an opening, to do so at any time while taking into account the reasonable needs of other modes of transportation. Vessels in distress and public vessels of the United States must be allowed to pass at any time or as soon as the train has cleared the bridge.

## **V. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This SNPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the SNPRM has not been reviewed by the Office of Management and Budget. (OMB).

This regulatory action determination is based on the ability that vessels can continue to transit the bridge at designated times throughout the day and when trains are

not crossing or when a vessel is in distress.

## B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

## C. Collection of Information

This proposed rule would call for no new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental

Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). The Coast Guard has that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **VI. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER**



**INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this SNPRM as being available in this docket and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. Amend §117.313 by revising paragraph (c) to read as follows:

#### § 117.313 New River

\* \* \* \* \*

(c) The draw of the Florida East Coast (FEC) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale shall operate as follows:

(1) The drawbridge shall be maintained in the fully open-to-navigation position for vessels at all times, except during period when it is closed for the passage of rail traffic, inspections and to perform periodic maintenance authorized in accordance with

subpart A of this part.

(2) The drawbridge shall not be closed to navigation for more than 60 consecutive minutes.

(3) The drawbridge shall open and remain open to navigation for a fixed 10-minute period each hour from 5 a.m. to 11:59 p.m., except that the drawbridge shall be open at the following times which shall serve as the hourly fixed 10-minute period:

- 7:00 a.m. until 7:10 a.m.
- 9:00 a.m. until 9:10 a.m.
- 4:00 p.m. until 4:10 p.m.
- 6:00 p.m. until 6:10 p.m.
- 10:00 p.m. until 10:10 p.m.

(i) Additionally, in each hour from 12:00 p.m. to 2:59 p.m., the drawbridge shall open and remain open to navigation for an additional 10-minute period.

(ii) The 10-minute opening periods shall be published on a quarterly basis by the drawbridge owner and reflected on the drawbridge owner's website and mobile application.

(4) The drawbridge shall have a drawbridge tender onsite at all times who is capable of physically tending and operating the drawbridge by local control, if necessary, or when ordered by the Coast Guard.

(i) The drawbridge tender shall provide estimated times of drawbridge openings and closures, upon request.

(ii) Operational information will be provided 24 hours a day on VHF-FM channels 9 and 16 or by telephone at (305) 889-5572. Signs shall be posted visible to marine traffic and displaying VHF radio contact information, website and application information, and the telephone number for the bridge tender.

(5) In the event of a drawbridge operational failure, or other emergency

circumstances impacting normal drawbridge operations, the drawbridge owner shall immediately notify the Coast Guard Captain of the Port Miami and provide an estimated time of repair and return to normal operations.

(6) A drawbridge log shall be maintained including drawbridge opening and closing times. The drawbridge log should include reasons for those drawbridge closings that interfere with scheduled openings in this part. This drawbridge log shall be maintained by the drawbridge owner and upon request, be provided to the Coast Guard.

(7) A website and mobile application shall be maintained by the drawbridge owner and publish:

(i) Drawbridge opening times required by this subsection;

(ii) Timely updates to schedules; including but not limited to impacts due to emergency circumstances, minor repairs and inspections;

(iii) At least 24-hour advance notice for each schedule in order to facilitate planning by maritime operators; and

(iv) To the extent reasonably practicable, at least 60-minutes advance notice of schedule changes or delays.

(8) The drawbridge shall display the following lights:

(i) When the drawbridge is in the fully open position, green lights shall be displayed to indicate that vessels may pass.

(ii) When rail traffic approaches the block signal, the lights shall go to flashing red, then the drawbridge lowers and locks, and the lights shall remain flashing red.

(iii) After the rail traffic has cleared the drawbridge, the drawbridge shall open and the lights return to green.

\* \* \* \* \*

Dated: June 21, 2021

Eric C. Jones

Rear Admiral, U. S. Coast Guard

Commander Seventh Coast Guard District

[FR Doc. 2021-13701 Filed: 6/28/2021 8:45 am; Publication Date: 6/29/2021]